

No. 06-3749

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**FILED**

OCT 17 2006

LEONARD GREEN, Clerk

STANSON R. HEMPHILL,

Petitioner-Appellant,

v.

UNITED STATES OF AMERICA,

Respondent-Appellee.

ORDER

OCT 17 PM 3:11

Stanson R. Hemphill appeals a district court order denying his motion to vacate his sentence filed pursuant to 28 U.S.C. § 2255. Hemphill's notice of appeal has been construed as an application for a certificate of appealability under Fed. R. App. P. 22(b) and he has filed a motion for the appointment of counsel.

In 2001, a jury convicted Hemphill of aiding and abetting a conspiracy to commit bank robbery, aiding and abetting bank robbery, and use of a firearm during and in relation to a crime of violence. He was sentenced to a total of 171 months of imprisonment. A panel of this court affirmed Hemphill's conviction and sentence on appeal. *United States v. Hemphill*, 76 F. App'x 6 (6th Cir. 2003).

In May 2004, Hemphill filed a § 2255 motion, essentially arguing that counsel rendered ineffective assistance in several respects. The district court concluded that most of Hemphill's arguments lacked merit, but it held an evidentiary hearing on the issue of whether counsel had failed to identify and call Robin Hicks as an alibi witness. After hearing from counsel, the district court concluded that this claim also lacked merit, and it denied Hemphill's § 2255 motion.

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Upon consideration, Hemphill is not entitled to a certificate of appealability because the district court's decision is not debatable amongst jurists of reason. *See Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003). Hemphill did not make a substantial showing that counsel's performance was deficient. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984). Counsel was not ineffective for failing to challenge a variance in the indictment because there was no variance. In addition, contrary to Hemphill's argument, counsel was not ineffective in failing to identify or call Robin Hicks as an alibi witness because Hemphill did not inform counsel that she was a potential witness. Finally, although counsel failed to request a limiting instruction with respect to testimony linking Hemphill to prior criminal activity, the district court properly concluded that Hemphill was not prejudiced because of the overwhelming evidence presented against him.

Accordingly, the application for a certificate of appealability is denied and the motion for the appointment of counsel is denied as moot.

ENTERED BY ORDER OF THE COURT

Leonard Green
Clerk

A TRUE COPY
Attest:
LEONARD GREEN, Clerk
By Walter Bane
Deputy Clerk

Mr. James Bonini, Clerk
Southern District of Ohio at Cincinnati
100 E. Fifth Street
Suite 103 Potter Stewart U.S. Courthouse
Cincinnati, OH 45202

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

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Filed: October 17, 2006

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RE: 06-3749
Hemphill vs. USA
District Court No. 04-00351

Enclosed is a copy of an order which was entered today in the above-styled case.

(Ms.) Nancy Barnes
Case Manager

Enclosure

cc:
Honorable Sandra S. Beckwith
Mr. James Bonini